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LIMITATIONS ON INVESTIGATING OFFICERS

ALBERT COATES*

Previous articles in this series have outlined the law in North Carolina on: (1) the territorial limits of city, county, state and federal criminal laws, (2) the law enforcing agencies set up by these governmental units and the territorial limits within which they are authorized to enforce the laws, (3) the powers of arrest within these territorial limits. This article undertakes to outline the principal limitations on the investigating powers of law enforcing officers in North Carolina: the limits to entrapment, the limits to search and seizure, the limits to confessions, the limits to self-incrimination, the limits to confrontation, and the limits to scientific aids in criminal investigation.

LIMITS TO ENTRAPMENT

In *State v. Smith*,¹ a police officer gave money to an agent with instructions to buy liquor from the accused. The liquor thus bought was used as evidence to convict the accused of violating the liquor law. The Court upheld the conviction, quoting with approval from the Attorney General's argument: "In the case at bar it does not appear that the Chief of Police told the agent to induce any sale. . . . The officer doubtless had the best of reasons for believing there was a live 'tiger' in the house of the defendant. He put out his bait and the tiger, for all his cunning, 'bolted' it, and now complains that the law of the jungle was violated, else he would not have been entrapped." This decision was affirmed on similar facts in *State v. Hopkins*.² Other jurisdictions have reached similar results: where an officer in plain clothes placed a bet with a man illegally engaged in making a book on horse races and used the evidence to convict him of violating the gambling laws;³ where a government agent wrote the accused for obscene pictures which he suspected him of sending through the mails, and used the pictures he received to convict the accused.⁴

The law allowed the officer in the foregoing cases to entrap the accused in a course of conduct already begun on his own volition. It does not allow him to start the accused on a course of criminal conduct and then penalize him for it. In *Sorrels v. United States*,⁵ a prohibition

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¹ 152 N. C. 798, 67 S. E. 508 (1910).

² 154 N. C. 622, 70 S. E. 394 (1911).

³ *State v. Stolbery*, 318 Mo. 958, 2 S. W. (2d) 618 (1928).

⁴ *Grimm v. United States*, 156 U. S. 604, 15 Sup. Ct. 470, 39 L. ed. 550 (1895).

⁵ 287 U. S. 435, 53 Sup. Ct. 210, 77 L. ed. 413 (1932).

agent was introduced to the accused as a furniture dealer. He told the accused that he was "an old 30th Division man" and that he would like to get a half gallon of whiskey. The accused told the agent he didn't fool with whiskey. Four or five times the agent asked the accused to get him some whiskey and the accused finally got it after the agent told him he thought "one former war buddy would get liquor for another." The Supreme Court of the United States refused to uphold a conviction based on this testimony. "It is clear," said Chief Justice Hughes, "that the evidence was sufficient to warrant a finding that the act for which defendant was prosecuted was instigated by the prohibition agent, that it was the creature of his purpose, that defendant had no previous disposition to commit it but was an industrious law-abiding citizen, and that the agent lured defendant otherwise innocent, to its commission by repeated and persistent solicitation in which he succeeded by taking advantage of the sentiment aroused by reminiscences of their experiences as companions in arms in the World War. Such a gross abuse of authority given for the purpose of detecting and punishing crime, and not for the making of criminals, deserves the severest condemnation."⁵ This was quoted with approval by the Supreme Court of North Carolina in *State v. Hughes*.⁶

Similar distinctions apply to the efforts of the owner of property to entrap thieves. If he has reason to suspect someone of planning to steal his property or break into his house, the law allows him to keep on the lookout and catch the thief. It may allow him to remove obstacles in the way of the thief, as where after a number of thefts he put money in his pocket, staggered around the streets seemingly under the influence of liquor, stumbled and fell in a dark alley, lay there in a seemingly drunken stupor and caught the thief as the money was taken from his pocket.⁷ So long as the owner does not originate the thief's plan or consent to the taking the thief may be convicted on the testimony obtained by strategy.⁸

But if the owner gets tired of waiting for the thief to come and plans the theft so he can catch a thief the law does not allow conviction. In *State v. Adams*,⁹ the owner was informed that the accused was planning to steal his cotton and instructed his agents to do whatever was necessary to catch him. One agent watched the cotton house three nights in succession, "and no one coming he filled up a couple of sacks with cotton, and leaving one of the sacks in the cotton house, he gave the other sack to the other agent and told her to go to the house of [the accused]

⁵ *Id.* at 441, 53 Sup. Ct. 212, 77 L. ed. 416.

⁶ 208 N. C. 542, 554, 181 S. E. 737, 745 (1935).

⁷ *People v. Hanselman*, 76 Cal. 460, 18 Pac. 425 (1888).

⁸ *State v. Hughes*, 208 N. C. 542, 181 S. E. 737 (1935).

⁹ 115 N. C. 775, 20 S. E. 722 (1894).

three hundred yards distant, and give it to him and tell him that he could get some more cotton. The other agent did as directed, and in a little while she returned with the accused, who entered the cotton house, took the other sack of cotton upon his shoulder and carried it home." Here the owner overstepped the bounds—the accused could not be convicted of taking the cotton against the owner's will when he took it with the owner's consent. This decision was in line with previous holdings of the Court in *Dodd v. Hamilton*¹⁰ and *State v. Jernigan*,¹¹ and was affirmed in the subsequent case of *State v. Goffney*,¹² where the owner, suspecting the accused of dishonesty, directed his servants to induce him to break into the owner's store and on the appointed night the accused went to the store, removed the window and entered, followed by the servant. "If it were possible to hold [the accused] guilty of a felony under such circumstances," said the Court,^{12a} "then Barnes [the owner] could be likewise convicted of feloniously breaking and entering his own store, for he was present, aiding and abetting the entry of the defendant and induced him to enter. That would of course be a legal absurdity."

LIMITS TO SEARCH AND SEIZURE

An officer making a lawful arrest, with or without warrant, has the incidental right of search and seizure without a search warrant. *This right extends to the person of the accused*: in *State v. Fowler*,¹³ the officers, pursuant to a lawful arrest, searched the arrested person, found a pistol, pistol scabbard and chisel in his pockets, took them from him and were allowed to keep them for use in evidence at the trial. The Court recognized the right "under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." Justice Rodman points out the reason for this right in *State v. Graham*:¹⁴ "If an officer who arrests one charged with an offense had no right to make the prisoner show the contents of his pocket, how could the broken knife, or the fragment of paper corresponding with the wadding, have been found? If when a prisoner is arrested for passing counterfeit money, the contents of his pockets are sacred from search, how can it ever appear whether or not he has on his person a large number of similar bills, which, if proved, is certainly evidence of the *scienter*? If an officer sees a pistol projecting from the pocket of a prisoner arrested for a fresh murder, may he

¹⁰ 4 N. C. 471 (1817).

¹¹ 4 N. C. 483 (1817).

¹² 157 N. C. 624, 73 S. E. 162 (1911).

^{12a} *Id.* at 626, 73 S. E. at 163.

¹³ 172 N. C. 905, 90 S. E. 408 (1916). See Coates, *The Law of Arrest in North Carolina* (1937) 15 N. C. L. REV. 101, 129.

¹⁴ 74 N. C. 646, 648, 649 (1876).

not take out the pistol against the prisoner's consent, to see whether it appears to have been recently discharged?"

This incidental right of search and seizure, according to the law of other jurisdictions, also extends to the immediate surroundings of the accused at the time of the arrest: to a suitcase in his hands;¹⁵ to the car in which he is riding;¹⁶ to the room in which he is found.¹⁷ The courts differ: as to whether the officer must limit his search in the room to articles in full view or whether he may make an exploratory search;¹⁸ as to whether the officer must limit his search to the one room, or may search the rest of the house.¹⁹

To this common law right of search and seizure incidental to arrest the legislature has added statutory rights to search without a warrant. To illustrate: the laws of 1923 authorized an officer without a search warrant to search any "automobile or vehicle or baggage of any person . . . where the officer sees or has absolute personal knowledge that there is intoxicating liquor in such vehicle or baggage."²⁰

Search by permission. The officer may, with the permission of the person concerned, search his person, his vehicle, his room, his dwelling, the surrounding premises. In *State v. Fowler*,²¹ where the officers procured the consent of the owner and without warrant searched the dwelling and took newspaper clippings, mutilated coins and other property which they thought would be useful in the case, the Court said: "There could not be any objection to the introduction in evidence of the articles found by the officers and voluntarily given by the two women who had them in their possession. This was not an illegal search and seizure."

If there is no lawful arrest and no permission, the officer must procure a search warrant before beginning the search. The fifteenth section of article one of the North Carolina Constitution declares: "General warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted." This provision is a limitation on state and local officers.

*An officer may obtain a search warrant for stolen goods*²² by (1) going before "any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town," and (2) proving on oath by "any

¹⁵ *State v. Simmons*, 183 N. C. 684, 110 S. E. 591 (1922).

¹⁶ *State v. Godette*, 188 N. C. 497, 125 S. E. 24 (1924).

¹⁷ *People v. Conway*, 225 Mich. 152, 195 N. W. 679 (1923).

¹⁸ See *People v. Woodward*, 220 Mich. 511, 190 N. W. 721 (1922).

¹⁹ See *Gaines v. State*, 28 Okla. 369, 230 Pac. 940 (1924).

²⁰ N. C. CODE ANN. (Michie, 1935) §3411(f); see also §§3398-3405.

²¹ 172 N. C. 905, 912, 90 S. E. 408, 411 (1916).

²² N. C. CODE ANN. (Michie, 1935) §4530.

credible witness . . . that there is reasonable cause to suspect that any person has in his possession, or on his premises any property stolen, or . . . counterfeit coin . . . note, bill or bonds, . . . instrument . . . for the counterfeiting of such coin . . . note, bill or bond." This warrant gives the officer the power "to search for the above property, and to seize the same, and to arrest the person having it in possession or on whose premises it may be found . . . and to bring them before any magistrate of competent jurisdiction to be dealt with according to law."

A valid search warrant must describe: (1) the article to be searched for with reasonable certainty, (2) the person in whose possession the article is supposed to be, and (3) the person by whom the complaint is made.

*An officer may obtain a search warrant for intoxicating liquors*²³ on sworn complaint by himself or other reputable citizen, that he has reason to believe that any person possesses liquor for the purpose of sale. This warrant gives him power to search the places described in the warrant and to seize all liquor and equipment for selling liquor found at those places. The complaint must describe: (1) the place or places to be searched "with sufficient particularity to identify them," and (2) the liquor and equipment used in selling liquor "as particularly as practicable, but any description, however general, that will enable the officer . . . to identify the property seized shall be deemed sufficient."

Similar statutes provide for search warrants in other situations, as for deserting seamen;²⁴ for game illegally killed and for devices illegally used in capturing game.²⁵ Other statutes provide for the seizure of gambling paraphernalia,²⁶ and for the forfeiture of narcotic drugs illegally possessed.²⁷

Even when the evidence is obtained by illegal search and seizure the North Carolina Courts admit it to convict the accused.²⁸ But this fact does not justify the officer in violating the constitutional prohibition of unreasonable search and seizure, and in so doing he is subject to lawful resistance by the owner, to indictment for criminal trespass and to a damage suit for the violation of constitutional rights.

LIMITS TO CONFESSIONS

"Confessions," said Justice Henderson in *State v. Roberts*,²⁹ "are either voluntary or involuntary. . . . When made neither under the influence of hope or fear . . . confessions are the highest evidences

²³ N. C. CODE ANN. (Michie, 1935) §§3411(1), 3380.

²⁴ N. C. CODE ANN. (Michie, 1935) §4473.

²⁵ N. C. CODE ANN. (Michie, 1935) §§2141(x), 2141(y).

²⁶ N. C. CODE ANN. (Michie, 1935) §§4436, 4437.

²⁷ N. C. CODE ANN. (Michie, 1935) §§6686(1-28).

²⁸ *State v. Wallace*, 162 N. C. 622, 78 S. E. 1 (1913).

²⁹ 12 N. C. 259, 261, 262 (1827).

of truth even in cases affecting life. But it is said and said with truth, that confessions induced by hope or extorted by fear are, of all kinds of evidence, the least to be relied on and are therefore entirely to be rejected." Thirty years before this case the North Carolina Court had refused to accept even a voluntary confession standing alone as sufficient proof of guilt;³⁰ but twenty years after in *State v. Cowan*,³¹ Chief Justice Ruffin said: "But we believe that it is now held by Courts of great authority, that an explicit and full confession of a felony, duly made by a prisoner, upon examination on a charge before a Magistrate, is sufficient to ground a conviction, though there be no other proof of the offence having been committed." Confessions are presumed to be voluntary until they are questioned, and the judge decides. Judges may, it is true, instruct juries to receive even voluntary confessions with caution, but they are not required to do so;³² and juries have the privilege of believing confessions in whole, in part, or not at all.³³

Voluntary Confessions. A confession does not become involuntary merely because it is made: (1) while the accused is under arrest or in the custody of a single officer,³⁴ of an officer and two assistants,³⁵ of several officers,³⁶ or is in jail;³⁷ (2) while the accused is handcuffed,³⁸ or tied with a rope, if the tying is not painful and the confession is not made to procure relief;³⁹ (3) while the accused is in the custody of an officer who had pointed a gun at him in making the arrest and the accused showed lack of fear by joking about the officer's "pop gun,"⁴⁰ or in custody of captors who had wounded him and were taking him to jail in a wagon and it appeared he was treated kindly and was not afraid,⁴¹ or in custody of a sheriff on a train with a threatening crowd outside, where the sheriff put himself between the prisoner and the crowd;⁴² (4) where the accused was ignorant of the consequences of his act—that hanging was the penalty for rape,⁴³ or was talking to a cell mate who promised not to tell and said that one criminal could not testify against another,⁴⁴ or was confronted with articles he was

³⁰ *State v. Long*, 2 N. C. 456 (1797).

³¹ 29 N. C. 239, 244 (1847).

³² *State v. Graham*, 68 N. C. 247 (1873); *State v. Hardee*, 83 N. C. 619 (1880).

³³ *State v. Davis*, 63 N. C. 578 (1869).

³⁴ *State v. Wright and Hairston*, 61 N. C. 486 (1868).

³⁵ *State v. Howard*, 92 N. C. 772 (1885).

³⁶ *State v. Gray*, 192 N. C. 594, 135 S. E. 535 (1926); *State v. Stefanoff*, 206 N. C. 443, 174 S. E. 411 (1934).

³⁷ *State v. Flemming*, 130 N. C. 688, 41 S. E. 549 (1902); *State v. Drakeford*, 162 N. C. 667, 78 S. E. 308 (1913).

³⁸ *State v. Whitfield*, 109 N. C. 876, 13 S. E. 726 (1891).

³⁹ *State v. Cruse*, 74 N. C. 491 (1876).

⁴⁰ *State v. De Graff*, 113 N. C. 688, 18 S. E. 507 (1893).

⁴¹ *State v. Horner*, 139 N. C. 603, 52 S. E. 136 (1905).

⁴² *State v. Daniels*, 134 N. C. 641, 46 S. E. 743 (1904).

⁴³ *State v. Jefferson*, 28 N. C. 305 (1846).

⁴⁴ *State v. Mitchell*, 61 N. C. 447 (1868).

supposed to have stolen and was asked where he got them,⁴⁵ or was confronted with clothes connecting him with the murder,⁴⁶ or he had been advised to "tell the truth."⁴⁷

Involuntary Confessions. In none of the foregoing cases did it appear that the confession was "induced by hope or extorted by fear." But the confession may become involuntary: (1) where advice to the accused to tell the truth is accompanied by menacing gestures and information as to the sort of "truth" that is wanted;⁴⁸ (2) where to arrest and custody are added promises that the accused will get off lighter if he confesses,⁴⁹ or false statements that the others have already confessed supplemented by several drinks of liquor;⁵⁰ (3) where to hostile crowds are added threats of lynching,⁵¹ or mob violence, and there is no protecting officer to stand between the person and the crowd;⁵² (4) where armed captors instead of treating the accused with kindness on the way to jail, keep him in the woods twelve miles from town and frighten him by persistent and hostile questioning;⁵³ (5) where to the handcuff or rope is added the lash until one of the suspects confesses,⁵⁴ and then the other confesses because his turn is coming next;⁵⁵ where to the accusation of incest is added the husband's threat to leave his wife if she does not confess it.⁵⁶ Confessions obtained under such circumstances are inadmissible as evidence on the theory that they are unreliable.

Second Confession. When a confession of crime is induced by hope or fear, subsequent confessions of the same crime are presumed to have come from the same hope or fear until it clearly appears that it has ceased to operate. To illustrate: when the confession of the accused to burglary after he had been shot at ten or twelve times by officers attempting to arrest him, was held involuntary, a second confession to

⁴⁵ State v. Sanders, 84 N. C. 729 (1881).

⁴⁶ State v. Myers, 202 N. C. 351, 162 S. E. 764 (1932).

⁴⁷ State v. Harrison, 115 N. C. 706, 20 S. E. 175 (1894); State v. Myers, 202 N. C. 351, 162 S. E. 764 (1932).

⁴⁸ State v. Whitfield, 70 N. C. 356 (1874); State v. Davis, 125 N. C. 612, 34 S. E. 198 (1899).

⁴⁹ State v. Drake, 113 N. C. 624, 18 S. E. 166 (1893); State v. Livingston, 202 N. C. 809, 164 S. E. 337 (1932).

⁵⁰ State v. Anderson, 208 N. C. 771, 182 S. E. 643 (1935). But in State v. Harrison, 115 N. C. 706, 20 S. E. 175 (1894) where an ignorant and superstitious old woman was tricked into a confession by a private detective who told her he was a "monger doctor" and could "work roots and gummer folks" and give "her something so she could not be caught," the confession was held to be voluntary.

⁵¹ State v. Lowry, 170 N. C. 730, 87 S. E. 62 (1915).

⁵² State v. Parish, 78 N. C. 492 (1878). ⁵³ State v. Dildy, 72 N. C. 325 (1875).

⁵⁴ State v. Fisher, 51 N. C. 478 (1859). ⁵⁵ State v. Lawson, 61 N. C. 47 (1866).

⁵⁶ State v. Brittain, 117 N. C. 783, 23 S. E. 433 (1895). But in State v. Hardee, 83 N. C. 619 (1880), where the accused was induced, by the promise of a girl to marry him, to confess to burning a granary, the court ruled that the confession was voluntary because the promise did not relate to any escape from, or mitigation of, the crime which he confessed.

the same officers the next day while he was handcuffed and in jail was held to be involuntary.⁵⁷ Where the wife's confession of incest was held involuntary because made under her husband's threat to leave her, a later confession to a third person in the presence of her husband was held involuntary in the absence of withdrawal of the husband's threat.⁵⁸ Where the confession of crime was held involuntary because induced by the promise of lighter punishment, a later confession of the same crime was held involuntary while the promise of lighter punishment was not withdrawn.⁵⁹ But a contrary result is reached where the original hope or fear has ceased to operate. When a confession made under fear of lynching immediately upon capture in Georgia was held involuntary, a second confession made several days later in a North Carolina jail, after the fear of the Georgia mob had ceased to operate on the prisoner's mind, was held voluntary.⁶⁰

Evidence Uncovered by Involuntary Confession. Evidence uncovered by involuntary confessions has always been admitted by the North Carolina Courts as: where the person accused of stealing property showed the officers where the stolen money, saddle bags and clothes were concealed;⁶¹ where the person accused of stealing property showed the officers where the stolen property was buried in a garden under some cabbage,⁶² or hidden in the woods;⁶³ and where the person accused of murder showed the officers where the bloody club used in the murder was concealed.⁶⁴

CONDUCT RELATED TO CONFESSIONS

The investigating officer is not limited to *statements* of the accused. He may tell the accused: to put his foot in a track at the scene of a crime to see if it fits;⁶⁵ to fix his hat "like he usually wears it" to aid the officer in identifying him;⁶⁶ to stand before the window through which the fatal shot had been fired, and to assume a "shooting position" to show that the accused was tall enough to have committed the murder;⁶⁷ to roll up his trousers so as to exhibit identifying bruises and scratches on his leg;⁶⁸ to take off bandages to show that the accused had not been burned as she falsely claimed;⁶⁹ to submit to physical ex-

⁵⁷ State v. Drake, 82 N. C. 592 (1880).

⁵⁸ State v. Brittain, 117 N. C. 783, 23 S. E. 433 (1895).

⁵⁹ State v. Roberts, 12 N. C. 259 (1827).

⁶⁰ State v. Lowry, 170 N. C. 730, 87 S. E. 62 (1915), followed in State v. Fox, 197 N. C. 478, 149 S. E. 735 (1929). ⁶¹ State v. Moore, 2 N. C. 482 (1797).

⁶² State v. Winston, 116 N. C. 991, 21 S. E. 37 (1895).

⁶³ State v. Lindsey, 78 N. C. 499 (1878).

⁶⁴ State v. Lowry, 170 N. C. 730, 87 S. E. 62 (1915).

⁶⁵ State v. Graham, 74 N. C. 646 (1876).

⁶⁶ State v. Bazemore, 193 N. C. 336, 137 S. E. 172 (1927).

⁶⁷ State v. Thompson, 161 N. C. 238, 76 S. E. 249 (1912).

⁶⁸ State v. Riddle, 205 N. C. 591, 172 S. E. 400 (1933).

⁶⁹ State v. Garrett, 71 N. C. 85 (1874).

amination to determine whether the accused had recently given birth to a child which she was charged with murdering;⁷⁰ to exhibit himself for identification.⁷¹ The physical facts thus disclosed may be used in evidence against the accused.

These physical facts have been allowed in evidence against the accused when disclosed under pressure at the officer's command. It is difficult to see how such evidence could be excluded by reason of the rule preventing involuntary confessions. "No hope or fear of the prisoner," says Justice Rodman in *State v. Graham*,⁷² "could produce a resemblance of his tracks to that found in the cornfield." Nor could the officer make the shoe fit the track, nor could the fact that the officer put the foot in the track affect the resemblance. The Court leaves unanswered the question "whether the officer might have compelled the prisoner to put his foot in the tracks if he had persisted in refusing to do so."

Other *conduct* of the accused may be significant: the fact that the accused fled on the approach of officers is some evidence of guilt;⁷³ the fact that he fled after the commission of the crime is some evidence of guilt where the accused was charged with attempted rape;⁷⁴ where the accused was charged with murder as in *State v. Foster*⁷⁵ and *State v. Tate*;⁷⁶ where the accused was charged with seduction;⁷⁷ or where the accused was charged with the manufacture and sale of liquor.⁷⁸ But flight is not by itself sufficient evidence for a conviction.⁷⁹

Other types of conduct besides flight of the accused are admissible as some evidence of guilt, as where the accused: fails to help search for a missing boy whom he is suspected of kidnaping;⁸⁰ or offers resistance to arrest;⁸¹ or attempts to escape after being arrested;⁸² or tries to bribe the officer to let him escape;⁸³ or in great agitation begs the officer to shoot him while they are on the way to jail;⁸⁴ or attempts to commit suicide while he is in jail;⁸⁵ or sends offer to the solicitor to accept a whipping if he will drop the charges against him.⁸⁶

⁷⁰ *State v. Eccles*, 205 N. C. 825, 172 S. E. 415 (1933).

⁷¹ *State v. Johnson*, 67 N. C. 55 (1872).

⁷² 74 N. C. 646 (1876).

⁷³ *State v. Adams*, 191 N. C. 526, 132 S. E. 281 (1926).

⁷⁴ *State v. Nat*, 51 N. C. 114 (1858).

⁷⁵ 130 N. C. 666, 41 S. E. 284 (1902).

⁷⁶ 161 N. C. 280, 76 S. E. 713 (1912).

⁷⁷ *State v. Mallonee*, 154 N. C. 200, 69 S. E. 786 (1910).

⁷⁸ *State v. Dickerson*, 189 N. C. 327, 127 S. E. 256 (1925).

⁷⁹ *State v. Foster*, 130 N. C. 666, 41 S. E. 284 (1902).

⁸⁰ *State v. Harrison*, 145 N. C. 408, 59 S. E. 867 (1907).

⁸¹ See *State v. Jacobs*, 106 N. C. 695, 697, 10 S. E. 1031 (1890).

⁸² See *State v. Dickerson*, 189 N. C. 327, 331, 127 S. E. 256, 258 (1925).

⁸³ *Ibid.*

⁸⁴ *State v. Jacobs*, 106 N. C. 695, 10 S. E. 1031 (1890).

⁸⁵ *State v. Lawrence*, 196 N. C. 562, 146 S. E. 395 (1928).

⁸⁶ *State v. DeBerry*, 92 N. C. 800 (1885).

The accused may always explain his conduct, as where he fled to avoid mob violence,⁸⁷ or where he fled on his father's advice, after being threatened by the murdered man's relatives.⁸⁸

But the failure to flee when other offenders fled,⁸⁹ or the failure to escape from jail when an opportunity arose⁹⁰ is not admissible as evidence in favor of the accused because such a practice would enable guilty persons to manufacture evidence in their favor. However, nothing prevents defense counsel from making the most of such conduct in arguing the case before the jury.

Silence. The fact that the accused says nothing may be significant if an accusation is made against him in his hearing under circumstances calling for a denial as: where a woman told a neighbor in the presence of the accused that he was the father of her illegitimate child, the fact that he immediately left the room without saying anything was some evidence of fornication and adultery;⁹¹ where the brother of the accused told a deputy-sheriff that the accused had been beating his wife, the fact that he remained silent was some evidence of assaulting the wife;⁹² where a little girl said to the accused, in the presence of her grandfather, "You are the fellow that burned the barn," and, "You burned our cow," the fact that he made no answer was some evidence of burning the barn;⁹³ where a neighbor asked the accused's small daughter, "What did Mrs. Bowman . . . say when she was dying?" and the child answered, "Mama told papa when she was dying that she was poisoned, and she got her dose in that drink of liquor he gave her this morning, and that was the last word Mama said," the fact that the accused said nothing, picked up his daughter and kept her with him until the visitors left was some evidence he had murdered his wife;⁹⁴ where the accused's wife said that stolen goods found in the house belonged to him, the fact that he remained silent was some evidence of possessing stolen goods;⁹⁵ where a woman said that the defendant had paid one-half of the doctor's fee for performing an abortion, the fact that he remained silent was some evidence that he had procured an abortion;⁹⁶ where the accused's wife said that he had broken into her trunk and got the gun—used in the murder,—the fact that he was silent was some evidence that he was implicated in the murder.⁹⁷

⁸⁷ State v. Hairston, 182 N. C. 851, 109 S. E. 45 (1921).

⁸⁸ State v. Mull, 196 N. C. 351, 145 S. E. 677 (1928).

⁸⁹ State v. Dickerson, 189 N. C. 327, 127 S. E. 337 (1925).

⁹⁰ State v. Taylor, 61 N. C. 508 (1868).

⁹¹ State v. Walton, 172 N. C. 931, 90 S. E. 518 (1916).

⁹² State v. Crockett, 82 N. C. 559 (1880).

⁹³ State v. Wilson, 205 N. C. 376, 171 S. E. 338 (1933).

⁹⁴ State v. Bowman, 80 N. C. 432 (1879).

⁹⁵ State v. Record, 151 N. C. 695, 65 S. E. 1010 (1909).

⁹⁶ State v. Martin, 182 N. C. 846, 109 S. E. 74 (1921).

⁹⁷ State v. Graham, 194 N. C. 459, 140 S. E. 26 (1927).

The accused may also explain away this type of evidence by showing that he did not actually hear the accusation;⁹⁸ or that if he heard it, he did not understand its significance,⁹⁹ because he was too drunk;¹⁰⁰ or that he did not understand the reference to the similarity between his white scarf and the murderer's scarf.¹⁰¹

Then too, the circumstances may not call for a denial as: where the accused was preoccupied with painful wound;¹⁰² or where the accused at the time of his arrest denied being present at the scene of the crime and further denial was useless. Accused was not required either to lie or to give incriminating answers in response to continued questioning.¹⁰³

In no case is silence in the face of an accusation in itself sufficient evidence for a conviction; it is simply a circumstance which the jury may consider along with other evidence.¹⁰⁴

Statements. Statements made by an accused person, tending to indicate guilt, have been admitted as some evidence of guilt: of *seduction*, where the accused said he promised to marry the girl, but "only did it from devilment,"¹⁰⁵ and where he said he was not "trying to fool" the girl but was going to marry her;¹⁰⁶ of *bigamy* where the accused acknowledged his first marriage;¹⁰⁷ of *assault and battery*, where he had threatened before the assault to give his victim a "caning",¹⁰⁸ and where the accused said before the assault took place that he "would shoot some d — — — before he slept";¹⁰⁹ of the *illegal sale of liquor* where the accused was overheard negotiating a sale;¹¹⁰ of *murder* where the accused was overheard discussing or admitting implication in the crime,¹¹¹ where a witness said to the accused after the homicide occurred, "I guess you had him to kill" and he answered, "Yes,"¹¹² and where the accused, charged with murdering his wife by strangling her with a rope, remarked when he saw a rope on the solicitor's table, "That is not the rope."¹¹³ Only the person who actually overheard the incriminating statement may testify to it at the trial.¹¹⁴ Such state-

⁹⁸ State v. Martin, 182 N. C. 846, 109 S. E. 74 (1921).

⁹⁹ State v. Perkins, 10 N. C. 377 (1824).

¹⁰⁰ State v. Martin, 182 N. C. 846, 109 S. E. 74 (1921).

¹⁰¹ State v. Spencer, 176 N. C. 709, 97 S. E. 155 (1918).

¹⁰² State v. Butler, 185 N. C. 625, 115 S. E. 889 (1923).

¹⁰³ State v. Dills, 208 N. C. 313, 180 S. E. 571 (1935).

¹⁰⁴ State v. Foster, 130 N. C. 666, 41 S. E. 284 (1902).

¹⁰⁵ State v. Horton, 100 N. C. 443, 6 S. E. 238 (1888).

¹⁰⁶ State v. Raynor, 145 N. C. 472, 59 S. E. 344 (1907).

¹⁰⁷ State v. Melton, 120 N. C. 591, 26 S. E. 933 (1897).

¹⁰⁸ State v. Bryson, 60 N. C. 476 (1864).

¹⁰⁹ State v. Lawhorn, 88 N. C. 634 (1883).

¹¹⁰ State v. Hopkins, 154 N. C. 622, 70 S. E. 394 (1911).

¹¹¹ State v. Herring, 200 N. C. 306, 156 S. E. 537 (1930).

¹¹² State v. Peterson, 149 N. C. 533, 63 S. E. 87 (1908).

¹¹³ State v. Swink, 19 N. C. 9 (1836).

¹¹⁴ State v. Lassiter, 191 N. C. 210, 131 S. E. 577 (1926).

ments are usually oral, but a written statement, such as a letter, is also admissible.¹¹⁵

LIMITS TO SELF-INCRIMINATION

"In all criminal prosecutions," says Section 11 of Article 1 of the North Carolina Constitution, no man can "be compelled to give evidence against himself." Pursuant to this provision the Court has held that the accused cannot be compelled to take the witness stand,¹¹⁶ that failure to testify will not create any presumption against him,¹¹⁷ that he cannot be compelled to produce incriminating documents,¹¹⁸ and that the solicitor cannot demand in the presence of the jury that the accused produce incriminating documents for fear of prejudicing the jury.¹¹⁹ But if incriminating documents have legally come into the possession of the prosecution, they may be admitted in evidence against the accused, as in *State v. Mallett*,¹²⁰ where ledgers and account books belonging to the accused were attached by the sheriff in the course of insolvency proceedings, and were subsequently admitted in a trial of the accused on the charge of conspiring to defraud creditors.

However, the officer is not required to start his investigation by telling the accused he need not talk. This doctrine was announced by the Court in *State v. Howard*,¹²¹ and affirmed in *State v. Grier*, where the prisoner's confession to the officer was excluded in the trial court on the ground that the officer had not informed him at the time that he was at liberty to refuse to answer. On appeal, the Supreme Court held¹²² that "this warning is not required in an extra-judicial conference between an officer and a person charged with crime who is under no constraint to answer." The accused, said the Court in *State v. Conrad*,¹²³ need not be informed of his right to refuse to answer any question put to him until the beginning of the preliminary examination before the magistrate, which latter includes a coroner's inquest.¹²⁴ Until that time he is "under no judicial constraint to answer."

But, beginning with the preliminary examination, statements made by the accused may not be used against him: where no caution was given as in *State v. Needham*,¹²⁵ and *State v. Vaughan*,¹²⁶ or where the caution was not given until after the accused had answered incriminating questions;¹²⁷ or where inadequate caution is given as in *State v.*

¹¹⁵ *State v. Carpening*, 157 N. C. 621, 73 S. E. 214 (1911).

¹¹⁶ *State v. Ellis*, 97 N. C. 447, 2 S. E. 525 (1887).

¹¹⁷ N. C. CODE ANN. (Michie, 1935) §1799; *State v. Bynum*, 175 N. C. 777, 95 S. E. 101 (1918).

¹¹⁸ *State v. Hollingsworth*, 191 N. C. 595, 132 S. E. 667 (1926).

¹¹⁹ *Ibid.*

¹²⁰ 125 N. C. 718, 34 S. E. 651 (1899).

¹²¹ 92 N. C. 772 (1885).

¹²² 203 N. C. 586, 588, 166 S. E. 595, 597 (1932).

¹²³ 95 N. C. 667 (1886).

¹²⁴ *State v. Matthews*, 66 N. C. 106 (1872).

¹²⁵ 78 N. C. 474 (1878).

¹²⁶ 156 N. C. 615, 71 S. E. 1089 (1911).

¹²⁷ *State v. Mathews*, 66 N. C. 106 (1872).

Rorie.¹²⁸ "This caution is not a mere matter of form," said the Court, "it is a substantial right." And in *State v. Parker*,¹²⁹ the Court said that the judge must find as a fact that the accused was properly cautioned before admitting the testimony given by him at a preliminary examination.

The question thus arises: what is adequate caution? *It is not enough* to tell the accused as in *State v. Rorie*¹³⁰ that he, "was charged with selling stolen corn, and that if he wanted to tell anything, he could do so, but it was just as he chose." And the confession was excluded in *State v. Parker*,¹³¹ where the accused was examined on oath which the Court considered a form of compulsion.

It is enough to tell the accused as in *State v. De Graff*,¹³² "that he need not say anything unless he wanted to, and it would not be used against him if he did not testify, and it was dangerous to go on the stand," or as in *State v. Patterson*,¹³³ "that he was not obliged to answer any questions for or against himself," and give him the choice to answer or not.

And the magistrate may correct his error in cautioning as in *State v. Cowan*,¹³⁴ where the magistrate had urged the defendant to confess and throw himself upon the mercy of the Governor for a pardon, but realizing his error, took the accused aside, explained that what the accused had already confessed could not be used against him, and that he need not say anything further, but that if he did, his statements could be used against him.

Waiver. The accused may waive his privilege of not testifying, and take the witness stand.¹³⁵ When he voluntarily takes the stand as a witness, he waives his privilege against self-incrimination, is subject to cross-examination, and is placed in the same position as any other witness.¹³⁶ When he does voluntarily testify, his testimony may not only be used against him at a subsequent trial for the same offense but also in trials for other offenses.¹³⁷

Statutes may waive his privilege against self-incrimination for him, compel him to give evidence, and punish him for contempt of court when he refuses to testify.¹³⁸ The statutes may provide that in supplemental

¹²⁸ 74 N. C. 148, 150 (1876).

¹²⁹ 132 N. C. 1014, 43 S. E. 830 (1903).

¹³⁰ 74 N. C. 148 (1876), followed in *State v. Spier*, 86 N. C. 600 (1882).

¹³¹ 132 N. C. 1014, 43 S. E. 830 (1903).

¹³² 113 N. C. 688, 692, 18 S. E. 507, 509 (1893).

¹³³ 68 N. C. 292 (1873).

¹³⁴ 29 N. C. 239 (1847).

¹³⁵ N. C. CODE ANN. (Michie, 1935) §1799.

¹³⁶ *State v. Efler*, 85 N. C. 585 (1881); *State v. Ellis*, 97 N. C. 447, 2 S. E. 525 (1887); *State v. Griffin*, 201 N. C. 541, 160 S. E. 826 (1931).

¹³⁷ *State v. Simpson*, 133 N. C. 676, 45 S. E. 567 (1903).

¹³⁸ *In re Briggs*, 135 N. C. 118, 47 S. E. 403 (1904).

proceedings the answers given by the accused under compulsion may not be used against him,¹³⁹ but it is possible nevertheless that he may be convicted on evidence furnished by other witnesses at a subsequent trial.¹⁴⁰ The statutes may provide not only that the testimony of the accused may not be used against him, but also that he shall be pardoned of the offense he is questioned about, as in the laws providing for lynching investigations,¹⁴¹ under which in *State v. Bowman*,¹⁴² the accused was held to be pardoned by the mere fact that he had been compelled to take the stand although he had in fact made no incriminating statements during the compulsory examination. The Court has upheld both types of statutes.¹⁴³ Similar statutes provide for compulsory testimony concerning: violations of student-hazing laws;¹⁴⁴ violations of certain election laws;¹⁴⁵ violations of laws prohibiting gambling or operation of gaming tables;¹⁴⁶ violations of laws regulating the manufacture and sale of liquor;¹⁴⁷ and violations of laws prohibiting the influencing of agents and servants to fail in duties owed to their employer.¹⁴⁸

LIMITS TO CONFRONTATION

"In all criminal prosecutions," says Article One, section eleven of the North Carolina Constitution, "every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other witnesses." "The word *confront*," says Chief Justice Pearson, "does not simply secure to the accused the privilege of examining witnesses in his own behalf, but is an affirmance of the rule of the common law that in trials by jury the witness must be present before the jury and accused, so that he may be confronted, that is, put *face to face*."¹⁴⁹

This right of confrontation was violated: where depositions were heard against the accused;¹⁵⁰ where the absence of a bank account was proved by a teller of the bank at which the forged check was cashed instead of by an officer of the bank on which the check was drawn;¹⁵¹ where the accounts and credit due the accused by a foreign corporation were proved by an accountant who examined the books, without

¹³⁹ N. C. CODE ANN. (Michie, 1935) §716.

¹⁴⁰ *State v. Mallett*, 125 N. C. 718, 34 S. E. 651 (1899).

¹⁴¹ N. C. CODE ANN. (Michie, 1935) §4571.

¹⁴² 145 N. C. 452, 59 S. E. 74 (1907).

¹⁴³ *State v. Mallett*, 125 N. C. 718, 34 S. E. 651 (1899); *In re Briggs*, 135 N. C. 118, 47 S. E. 403 (1904).

¹⁴⁴ N. C. CODE ANN. (Michie, 1935) §4220.

¹⁴⁵ N. C. CODE ANN. (Michie, 1935) §§4187, 6055(a)54.

¹⁴⁶ N. C. CODE ANN. (Michie, 1935) §1800.

¹⁴⁷ N. C. CODE ANN. (Michie, 1935) §§3406, 3411(y).

¹⁴⁸ N. C. CODE ANN. (Michie, 1935) §4476.

¹⁴⁹ *State v. Thomas*, 64 N. C. 74, 76 (1870).

¹⁵⁰ *State v. Webb*, 2 N. C. 103 (1794).

¹⁵¹ *State v. Dixon*, 185 N. C. 727, 117 S. E. 170 (1923).

giving any evidence to identify the books, or the persons making entries in them, or the manner of making the entries.¹⁵²

This right of confrontation was not violated: where official records were offered in evidence¹⁵³ and where government regulations prevented the licensing official from testifying and the issuance of a federal liquor license was proved by federal records;¹⁵⁴ nor where the accused wrongfully procured or prevented the witness from attending the trial, and the court admitted testimony of a witness given at a preliminary examination in which the accused had the opportunity to cross-examine;¹⁵⁵ nor where the witness has become insane or has died;¹⁵⁶ nor where the witness is too ill to attend court.¹⁵⁷

The accused waives his right of confrontation: where he fails to make specific objections as in *State v. Mitchell*,¹⁵⁸ in which records of a bastardy trial before a justice of the peace were offered in evidence at the trial on appeal; or where he excuses a witness from cross-examination;¹⁵⁹ or where he flees during the trial.¹⁶⁰

DYING DECLARATIONS

Types of evidence for which officers should be on the lookout are dying declarations and spontaneous utterances as part of the *res gestae*. These are sometimes considered by the courts as exceptions to the hearsay rule and sometimes as exceptions to the right of confrontation.

In homicide cases statements made by the dying person, when he was in actual danger of death and thought he was going to die, are admissible in evidence to show who committed the crime and the circumstances under which it was committed. These statements may be oral or written.¹⁶¹

In *State v. Wallace*,¹⁶² Justice Adams quoted from an English case: "These declarations are received on the general principle that they are made in extremity—'when—the party is at the point of death, and when every hope of this world is gone: when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn, and so awful, is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.'"

¹⁵² *State v. Breece*, 206 N. C. 92, 173 S. E. 9 (1934).

¹⁵³ *State v. Dowdy*, 145 N. C. 432, 58 S. E. 1002 (1907).

¹⁵⁴ *State v. Toler*, 145 N. C. 440, 58 S. E. 1005 (1907).

¹⁵⁵ *State v. Maynard*, 184 N. C. 653, 113 S. E. 682 (1922).

¹⁵⁶ *Ibid.*

¹⁵⁷ 114 N. C. 797, 19 S. E. 220 (1894).

¹⁵⁸ 119 N. C. 784, 25 S. E. 783 (1896).

¹⁵⁹ *State v. Harris*, 181 N. C. 600, 107 S. E. 466 (1921).

¹⁶⁰ *State v. Cherry*, 154 N. C. 624, 70 S. E. 294 (1911).

¹⁶¹ *State v. Alexander*, 179 N. C. 759, 103 S. E. 383 (1920).

¹⁶² 203 N. C. 284, 288, 165 S. E. 716, 718 (1932).

The fact that the dying man thought he was going to die may be shown: by his own statements as in *State v. Blackburn*,¹⁶³ where he said "I am going to die," or as in *State v. Brinkley*,¹⁶⁴ where he said, "Boys, you have killed me"; or by the statements of others as in *State v. Bagley*,¹⁶⁵ where a doctor told him he was going to die. Even though the person does not at first think he will die, statements made later when he does think so are admissible as in *State v. Laughter*,¹⁶⁶ where a woman who was badly beaten by her husband went to bed, grew worse for two weeks, said that her husband had beaten her, and that she was going to die, and did die the next day.

If a person was in actual danger of death and thought he was going to die at the time he made his statement, the mere fact that he later had hopes of recovery or that he lingered for a few hours as in *State v. Quink*,¹⁶⁷ or for a few days, or even for five months as in *State v. Craine*,¹⁶⁸ will not prevent the use of the dying declarations as evidence.

Dying declarations are competent: to show the identity of the murderer: where the dying man names him;¹⁶⁹ where he describes the murderer: as "a small white man—looked like [the accused] and ran like him,"¹⁷⁰ as "a tall yellow man,"¹⁷¹ as "the man behind me";¹⁷² or as "a lady" in case of death resulting from an abortion.¹⁷³ Dying declarations are also competent to show how the murder was committed, i. e.: that the victim was shot;¹⁷⁴ cut with a knife;¹⁷⁵ severely beaten;¹⁷⁶ or hit with a rock.¹⁷⁷

A statement of opinion is not admissible as in *State v. Jefferson*,¹⁷⁸ where the dying man said, "I think it was [the accused] who shot me, but it was so dark I couldn't see." But such statements as "[The accused] shot me without cause," or "I have done nothing to be shot for" as in *State v. Watkins*,¹⁷⁹ and *State v. Williams*,¹⁸⁰ were admitted to rebut the accused's plea of self-defense.

Dying declarations may be used to prove innocence as well as guilt, as in *State v. Blackwell*,¹⁸¹ and *State v. Gregory*,¹⁸² where the dying man said that the shooting was accidental.

¹⁶³ 80 N. C. 474 (1879).

¹⁶⁵ 158 N. C. 608, 73 S. E. 995 (1912).

¹⁶⁷ 150 N. C. 820, 64 S. E. 168 (1909).

¹⁶⁹ *State v. Bohanson*, 142 N. C. 695, 55 S. E. 797 (1906).

¹⁷⁰ *State v. Dixon*, 131 N. C. 808, 42 S. E. 944 (1902).

¹⁷¹ *State v. Wallace*, 203 N. C. 284, 165 S. E. 716 (1932).

¹⁷² *State v. Beal*, 199 N. C. 278, 154 S. E. 604 (1930).

¹⁷³ *State v. Layton*, 204 N. C. 704, 169 S. E. 650 (1933).

¹⁷⁴ *State v. Langley*, 204 N. C. 687, 169 S. E. 705 (1933).

¹⁷⁵ *State v. Peace*, 46 N. C. 251 (1854).

¹⁷⁶ *State v. Laughter*, 159 N. C. 488, 74 S. E. 913 (1912).

¹⁷⁷ *State v. Shelton*, 47 N. C. 360 (1855).

¹⁷⁸ 125 N. C. 712, 34 S. E. 648 (1899).

¹⁸⁰ 168 N. C. 191, 83 S. E. 714 (1914).

¹⁸² 203 N. C. 528, 166 S. E. 387 (1932).

¹⁶⁴ 183 N. C. 720, 110 S. E. 783 (1922).

¹⁶⁶ 159 N. C. 488, 74 S. E. 913 (1912).

¹⁶⁸ 120 N. C. 601, 27 S. E. 72 (1897).

¹⁷⁹ 159 N. C. 480, 75 S. E. 22 (1912).

¹⁸¹ 193 N. C. 313, 136 S. E. 868 (1927).

If the dying man does not think he is going to die, his statements are not admissible even though he dies immediately after making them. "If at the time of making the declaration, [the victim] has reasonable prospects and hope of life, such declarations ought not to be received; for there is room to apprehend he may be actuated by motives of revenge and an irritated mind, to declare what possibly may not be true."¹⁸³

In all cases the judge must first rule on the admissibility of dying declarations. But the weight of this evidence, when it is admitted, is for the jury—to believe in whole, in part, or not at all.¹⁸⁴

RES GESTAE—SPONTANEOUS STATEMENTS

Spontaneous statements, made at the time and on the spot of the crime, may be some evidence of guilt: of *murder* as in *State v. Hinson*,¹⁸⁵ where the father intervening to stop a fight between two sons said, "I told you to quit; you are going to get cut," and the son who later died from his wounds yelled, "I am cut"; as in *State v. McCowry*,¹⁸⁶ where the witness heard a "lick," whirled around and asked what it was, and one witness answered, "[The accused] hit Bob . . . with a rock" and the dying man shouted, "[The accused] has struck me"; as in *State v. Jarrell*,¹⁸⁷ where one of the two accused persons shouted as they rushed to make a murderous assault on their victim, "We will whip you in a minute"; as in *State v. Utley*,¹⁸⁸ where the accused remarked immediately after the fatal shooting, "It was a damned good shot, wasn't it, with my left hand?"; as in *State v. Spivey*,¹⁸⁹ where the dying man repeated several times while being carried up on a porch, "[The accused] shot me, because I see'd him"; of *manslaughter* as in *State v. Dills*,¹⁹⁰ where a witness, watching the accused drive off in a truck shortly before a fatal accident, remarked that he was drunk and "not fit to operate the little truck."

Such spontaneous statements may be introduced by the accused as well as by the prosecution, usually for the purpose of showing self-defense as in *State v. Rollins*,¹⁹¹ where the accused was heard to say in the midst of a fracas resulting in homicide, "Catch hold of this man; he has tried to kill me"; or as in *State v. Carraway*,¹⁹² where a bystander exclaimed in the midst of the fracas, "He [the deceased] is going to cut [the accused] to pieces, ain't he?" Justice Allen quoted with approval from Underhill's Criminal Evidence, §1, "The exclamations of persons who were present at a fracas in which a homicide occurred,

¹⁸³ *State v. Moody*, 3 N. C. 31 (1798).

¹⁸⁴ *State v. Davis*, 134 N. C. 622, 46 S. E. 730 (1904); *State v. Williams*, 168 N. C. 191, 83 S. E. 714 (1914).

¹⁸⁵ 150 N. C. 827, 64 S. E. 124 (1909).

¹⁸⁷ 141 N. C. 722, 53 S. E. 127 (1906).

¹⁸⁹ 151 N. C. 676, 65 S. E. 995 (1909).

¹⁹¹ 113 N. C. 722, 18 S. E. 894 (1893).

¹⁸⁶ 128 N. C. 594, 38 S. E. 883 (1901).

¹⁸⁸ 132 N. C. 1022, 43 S. E. 820 (1903).

¹⁹⁰ 204 N. C. 33, 167 S. E. 459 (1932).

¹⁹² 181 N. C. 561, 107 S. E. 142 (1921).

showing the means and mode of killing, are admissible for or against the accused because of their unpremeditated character and their connection with the event by which the attention of the speaker was engrossed.' "192^a

SCIENTIFIC AIDS TO CRIMINAL INVESTIGATION

Within the limits imposed by constitution, common law and statute the investigating officer may exercise all his native abilities, sharpened by training, seasoned by experience and lengthened by increasing scientific techniques. Native abilities, even when sharpened by training and seasoned by experience, are narrowly limited. The words of the pursuing officer when shouted reach a short distance but when picked up by the telegraph as in *Simmons v. Vandyke*,¹⁹³ or the telephone as in *Colorado v. Hutchinson*,¹⁹⁴ or the radio they may reach to the next town, county, state or nation in the effort to locate and round up fugitives from justice. With the aid of the dictograph the officers can lift a whisper from the lips of men in secret conference, and with the aid of the dictaphone they can record it for reproduction in court or wherever else it may be required.

The normal human eye can see only objects above a certain size or within limited distances. But *with the aid of the microscope* the officer can see things too small for the naked eye. He can detect the markings on a bullet and tell the gun from which it was fired as in *State v. Shawley*,¹⁹⁵ where a ballistics expert fired test bullets from the accused's rifle and compared them with the bullet causing death, showing they had the same microscopic markings, and had been fired from the same gun; tell whether a substance is paint and identify it as coming from a hit and run car as in *People v. Wallage*,¹⁹⁶ where paint found on the shirt of the deceased was proved to be similar to the paint on the fender of the accused's automobile; detect animal or vegetable fibres, soils and dusts and help to determine the presence of the accused at the scene of the crime as in *Territory of Hawaii v. Joseph Young*,¹⁹⁷ where soil on the accused's trousers was proved to be similar to that at the scene of a rape. *With the aid of the field glass* he can from great distances keep unobserved watch over buildings where suspects are staying or expected, or "pay off" spots where extortion money is left. *With the aid of the X-ray* he can see through solid objects which would stop his glance on the surface, detect a bullet in human flesh and throw light on the causes of death as in *State v. Matheson*,¹⁹⁸ where an X-ray pho-

^{192a} *Id.* at 565, 107 S. E. at 144.

¹⁹³ 138 Ind. 380, 37 N. E. 973 (1894).

¹⁹⁴ 9 F. (2d) 275 (C. C. A. 8th, 1925); (1926) 24 Mich. L. Rev. 712.

¹⁹⁵ 334 Mo. 352, 67 S. W. (2d) 74 (1933).

¹⁹⁶ 353 Ill. 30, 186 N. E. 540 (1933).

¹⁹⁷ 32 Hawaii 628 (1931).

¹⁹⁸ 130 Iowa 440, 103 N. W. 137 (1905).

tograph was used to show the position of a bullet in the body of the murdered man. *With the aid of the ultra-violet ray* he can detect erasures, reveal invisible inks, discover stains that have faded out of sight and throw light on forgeries, secret messages and other clues which may aid in the solution of crimes as in *State v. Thorp*,¹⁹⁹ where ultra-violet ray photographs were taken of footprints left on bloodstained linoleum and the print found to match the soles and heels of the accused's shoes, where details of the footprints sufficient to make an identification were not visible to the naked eye.

With the aid of photography he can preserve the scene of the crime for use in further investigation and to aid in presenting the evidence in court,²⁰⁰ or to show how the parts of a still found in the possession of the accused would be assembled to make a complete still,²⁰¹ or to show how an automobile accident occurred as in *State v. Lutterloh*,²⁰² where photographs showing the width and general topography of the road were used in explaining testimony, and the accused was convicted of manslaughter. He can make motion pictures of the suspect to disprove his frauds, as in the Harvey Green case investigated by the Federal Bureau of Investigation on the West Coast, where motion pictures were secretly taken of Green to show he was not blind as claimed by him in his attempt to collect government insurance. He may even get a picture of the criminal in action by the aid of an automatic camera device arranged so that it photographs a burglar as he breaks into a store. Pictures have also been taken of a holdup man robbing a stage-coach and of a tramp stealing food from an ice box on the back porch of a man's home. Drawings, maps and diagrams have been used to achieve a similar purpose as in *State v. Wilcox*,²⁰³ where a witness used a drawing to demonstrate the relative position of places involved in the evidence given by him; as in *State v. Harrison*,²⁰⁴ where in a kidnaping trial a map was used to show the location of a residence; as in *State v. Kee and Matthews*,²⁰⁵ where diagrams were used to show the relative position of several objects in the vicinity of a bank which had been robbed.

With the aid of moulage he can make faithful reproductions of tracks which would disappear with the melting of snow or the falling of rains or the moving of traffic; or the mark left by burglars' tools in forcing open windows and safes.

With ever increasing persistence scientists have been extending knowledge on many fronts and constantly developing skills for the use

¹⁹⁹ 86 N. H. 501, 171 Atl. 633 (1934).

²⁰⁰ *State v. Mathews*, 191 N. C. 378, 131 S. E. 743 (1926).

²⁰¹ *State v. Jones*, 175 N. C. 709, 95 S. E. 576 (1918).

²⁰² 188 N. C. 412, 124 S. E. 752 (1924). ²⁰³ 132 N. C. 1120, 44 S. E. 625 (1903).

²⁰⁴ 145 N. C. 408, 59 S. E. 867 (1907). ²⁰⁵ 186 N. C. 473, 119 S. E. 893 (1923).

of law enforcing officers in detecting crime: they can tell the officer whether a substance is poison as in *State v. Bowman*,²⁰⁶ where chemical examination of tissues and organs of a dead body disclosed the presence of strychnine; whether the death of a person found in a burned building was due to the fire or to the poison found in his system as in *State v. Holly*,²⁰⁷ where the body of an eighteen year old boy was recovered from a burning hotel, and a medical expert attributed his death to poisoning with strychnine; whether the death of a person found in a river was due to drowning or to other causes as in *State v. Wilcox*,²⁰⁸ where physicians testified that absence of water in the lungs of a murdered woman showed that she had not died from drowning; whether a blow or a wound was sufficient to cause death;²⁰⁹ whether the suspect is the man who left his finger prints at the scene of the crime;²¹⁰ whether the bullet which shattered the windshield or window was fired from within or without the car or building as in the trial of John Paul Chase, a member of Dillinger's gang, for murder, where it was proved that bullets fired through the rear window of the car came from inside and not outside, refuting Chase's claim that a bullet from his pursuer's gun came through his rear window before he fired; whether the hand of the suspect is the hand that wrote the extortion note as in the case of Frank Hampton Crump tried in the U. S. District Court at Rockingham in 1936, where samples of his handwriting were compared with that used in the extortion letter and identified as of the same person; whether notes were counterfeit as in *State v. Cheek*;²¹¹ whether the typewriter in the accused's possession is the one that was used in writing the extortion letters as in *State v. Moore*;²¹² whether the blood found on clothes is human blood or animal blood as in *State v. Dunn*,²¹³ where tests showed that stains on an article contained in the ruins of a burned house were human blood.

With murders, manslaughters, rapes, robberies, burglaries, larcenies, auto thefts and aggravated assaults counting up to a million and a half and lesser offenses counting up to fifteen millions committed in the United States in a single year, with about one-fourth of the serious offenders and about one-tenth of the less serious offenders caught and held for prosecution, with an annual crime bill counting up to about fifteen billion dollars a year,²¹⁴ law enforcing officers are called upon to add these advancing scientific skills to their native abilities in the unending task of keeping the peace.

²⁰⁶ 80 N. C. 432 (1879).

²⁰⁷ 155 N. C. 485, 71 S. E. 450 (1911).

²⁰⁸ 132 N. C. 1120, 43 S. E. 819 (1923).

²⁰⁹ *State v. Messer*, 192 N. C. 80, 133 S. E. 404 (1926).

²¹⁰ *State v. Coombs*, 200 N. C. 671, 158 S. E. 252 (1931).

²¹¹ 35 N. C. 114 (1851).

²¹² 204 N. C. 545, 168 S. E. 842 (1933).

²¹³ 161 La. 532, 109 So. 56 (1926).

²¹⁴ See THORSTEN SELLIN, *Importance of Criminal Statistics*, PROCEEDINGS OF THE ATTORNEY-GENERAL'S CONFERENCE ON CRIME (1934).